

# LEVI&KORSINSKY LLP

**MEMO ENDORSED**

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September 16, 2020

**SUBMITTED VIA ECF**

The Honorable Valerie E. Caproni  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

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Re: *Grablis v. OneCoin Ltd. et. al.*, Case No. 1:19-cv-4074

Dear Judge Caproni:

We write on behalf of Lead Plaintiff Donald Berdeaux and Plaintiff Christine Grablis (together, “Plaintiffs”) in the above-captioned matter (the “Action”). Plaintiffs request clarification from the Court regarding: (1) whether Plaintiffs have already received leave to file a Second Amended Complaint based on this Court’s July 24, 2019 Order (the “July 2019 Order,” ECF No. 39), and if not, whether Plaintiffs must seek leave to file a Second Amended Complaint; and (2) based upon the July 2019 Order, whether Plaintiffs must choose to file either a Second Amended Complaint or file an opposition to the Defendants’ Motions to Dismiss (the “Motions to Dismiss,” ECF Nos. 107-111).

As background to Plaintiffs’ request for clarification, Plaintiffs note that, on July 24, 2019, this Court entered an order stating:

No later than August 2, 2019, Lead Plaintiff must file an Amended Complaint with a caption amended to reflect the Court’s selection of him as Lead Plaintiff, along with any further amendments which Lead Plaintiff may wish to make.

See July 2019 Order at ¶ 6. The July 2019 Order also stated:

If Defendants move to dismiss the Amended Complaint, Lead Plaintiff must file either a Second Amended Complaint or an opposition to the motion(s) to dismiss, see FED. R. CIV. P. 15(a)(1)(B); Individual Practices in Civil Cases § 4(E)(i), ***no later than October 4, 2019.***

See *id.* at ¶ 8 (emphases added).

On August 2, 2019, pursuant to the July 2019 Order, Plaintiffs filed their First Amended Complaint. [ECF No. 40]. However, before the remainder of the July 2019 Order could be effectuated -- and before any Second Amended Complaint or opposition to any motion(s) to

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dismiss the First Amended Complaint could be filed -- this Action was ordered stayed until all the pertinent Defendants had been served. [ECF No. 46]. On May 1, 2020, after noting that service on the pertinent Defendants had been completed, this Court ordered the stay in this Action lifted. [ECF No. 102]. On May 8, 2020, pursuant to Court order, the Parties filed a proposed briefing schedule regarding the Defendants' anticipated Motions to Dismiss, setting Defendants' deadline to answer the First Amended Complaint or move to dismiss the pleading (June 25, 2020), Plaintiffs' deadline to file opposition papers to any motion(s) to dismiss the First Amended Complaint (August 12, 2020), and Defendants' deadline to file replies in further support of their motion(s) to dismiss the First Amended Complaint (September 2, 2020). [ECF No. 103]. This Court endorsed that briefing schedule the same day. [ECF No. 104].

Pursuant to this briefing schedule, Defendants filed their Motions to Dismiss the Amended Complaint on June 24, 2020. On July 22, 2020, Plaintiffs requested from the Court an extension of time to respond to the Motions to Dismiss on the basis of their cooperation with then-Defendant Konstantin Ignatov. [ECF No. 114].<sup>1</sup> Plaintiffs did so noting the difficulties in coordinating communications with an inmate and stating that, based on information learned from Ignatov's cooperation, Plaintiffs may seek to file a Second Amended Complaint. *See* ECF No. 114, at 1-2. On July 27, 2020, this Court granted Plaintiffs' letter motion and extended to September 23, 2020 the deadline for Plaintiffs to respond to the Motions to Dismiss. [ECF No. 116].

Therefore, in light of the above relevant procedural history in this Action and the July 2019 Order, Plaintiffs seek clarification as to whether: (1) consistent with Paragraph 8 of the Court's July 2019 Order, Plaintiffs have leave to file a Second Amended Complaint by or before the due date for response to the Motions to Dismiss (i.e., September 23, 2020), or must Plaintiffs file a new motion for leave to amend their pleading to file a Second Amended Complaint; and (2) Plaintiffs must to choose either to file a Second Amended Complaint or oppose the Motions to Dismiss on September 23, 2020, or must Plaintiffs oppose the Motions to Dismiss while seeking leave to amend their pleading as an alternative ground for relief?

Plaintiffs thank the Court for its consideration in this matter and remain ready and available to answer any additional questions the Court may have.

Respectfully submitted,  
/s/ Donald J. Enright

cc: All Counsel of Record (via CM/ECF)

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<sup>1</sup> Then-Defendant Ignatov was voluntarily dismissed from this Action without prejudice on August 20, 2020 on the basis of cooperation with Plaintiffs. [ECF No. 118]. Since granting the extension, and due to the issues involved with navigating call schedules with an inmate, Plaintiffs were able to obtain their first interview with Ignatov on September 11, 2020, and their second interview on September 16, 2020. These interviews have produced substantial useful information with which to bolster Plaintiffs' claims in a Second Amended Complaint.

Not later than the September 23, 2020 deadline, Plaintiffs may *either* file a Second Amended Complaint *or* oppose Defendants' motions to dismiss; Plaintiffs may not do both.

SO ORDERED.



09/18/2020

HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE